

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment)	WT Docket No. 17-79
By Removing Barriers to Infrastructure Investment)	

**COMMENTS OF THE
DUPAGE MAYORS AND MANAGERS CONFERENCE**

These comments are filed by the DuPage Mayors and Managers Conference (Conference) in response to the Public Notice in the above-entitled proceeding.

INTRODUCTION

The Conference is a council of 33 municipal governments in DuPage County, Illinois. Our membership is comprised of both elected and appointed officials. The Conference is a not-for-profit organization dedicated to addressing municipal public policy issues.

MUNICIPALITIES HAVE A PUBLIC DUTY TO PRESERVE AND PROTECT THE RIGHTS-OF-WAY

The FCC is seeking comment on whether it should enact rules to promote the deployment of broadband infrastructure by preempting state and local laws that inhibit broadband deployment. While local governments enthusiastically support the goals of providing reliable cellular coverage throughout our communities and encouraging the new frontier of technology such as 5G, the Conference respectfully urges the FCC to refrain from enacting rules that preempt state and local laws because such rules would diminish the local ability to protect the public health, safety, and welfare.

Illinois state law provides municipalities with extensive discretion with respect to permitted uses, special uses, and variances with respect to land uses. This discretion is rooted in the variety of urban, suburban, and rural small and medium communities, and in how land use planning impacts each type of community differently. Different land uses within a municipality may necessitate different siting and aesthetic requirements, for example undergrounding or camouflage along main commercial routes. These specific needs must be addressed in the application process and require municipalities to examine applications on an individual basis to ensure collocation requests are structurally sound and aesthetically appropriate given the location.

While local governments support the goal of providing reliable cellular coverage throughout our communities, we must also consider and protect the health, safety, and welfare of the public. If the ability of municipalities to regulate the location and installation of wireless facilities within their jurisdictions is limited, communities will face a threat to public safety. Providers may otherwise locate wireless facilities where they would interfere with or interrupt critical municipal systems used by police, firefighting, water, and other local operations such as supervisory control and data acquisition (SCADA) systems. At a meeting this past fall, Mobilitie representatives informed Conference members that they are submitting applications to site wireless facilities in locations they have identified using Google Maps. Municipalities must have recourse to address unsafe installations or dangerous equipment.

RIGHTS-OF-WAY NEGOTIATION AND APPROVAL PROCESSES

In Illinois, rights-of-way are held as a public trust; other than joint utility locating, control and management of the right-of-way is not controlled by the state, but, rather, is the responsibility of municipalities and counties. In 2007, the Illinois Municipal League (IML) prepared a model Right-of-Way Control Ordinance based on best practices that addressed siting of public utilities. Many Illinois communities have adopted the model ordinance. In 2016, the IML worked with municipal attorneys and attorneys from the telecommunications industry to create a model Small Cell Antenna/Tower Right-of-Way Siting Ordinance that dovetails with the model Right-of-Way Control Ordinance. This represents an effort by Illinois municipalities to develop reasonable standards intended to strike a balance between the needs of wireless carriers to improve capacity and density, and the needs of municipalities to preserve proper use of the right-of-way with a focus on safety and protection of other utilities located in the right-of-way.

However, one size does not fit all. Municipalities are diverse and many Illinois municipalities have enacted or are in the process of enacting local ordinances and/or master license agreements to ensure efficient processing of wireless facilities requests. Conference member municipalities first reported hearing from Mobilitie in the late spring of 2016. Each municipality must be given a chance to develop reasonable regulations that will ensure reliable cellular coverage and simultaneously protect their community's specific needs. Municipalities also differ in the resources they have available to address these procedures, including permit reviews and the like. While we do not believe that undue delays by any party to these activities should be condoned, the local regulatory body must have actually sufficient time to review and respond to applications for facility sites.

Many, if not most, municipalities are inherently well motivated to take all necessary actions that will assist in providing residents and businesses access to new technologies and services as expediently as possible. It would be detrimental to force those jurisdictions into a constrained regulatory framework that creates safety and other risks to the public. The model ordinance mentioned above and the locally created ordinances and license agreements in individual municipalities are all examples of successful processes, as evidenced in part by the industry's agreement to the local regulations in those communities.

There must also be a clear acknowledgement of the impact that actions by the industry have on the timing of local approvals. It has not been uncommon for applicants to submit insufficient and incomplete applications, only to fail to reply to the municipality's request for correction or to retract an application and resubmit a wholly different request. These actions by the industry create a drain on the finite resources that a local government has to dedicate to these efforts.

REASONABLE FEES AND OTHER COSTS

Several facts must be considered when assessing the appropriateness of fees in this context. Historically, utilities of all kinds have provided compensation as consideration for their use of public rights-of-way. Certainly, these fees must first and foremost cover all costs of regulating and enforcing regulations regarding the rights-of-way; a commercial venture which create profits for individuals as a result of its enterprise should in no way create a drain on local public resources without the overt consent of that local jurisdiction.

The appropriateness of a fee, however, is not based solely on the direct costs of regulation. The industry acting in this arena is using a public resource, the right-of-way, to generate an individual profit. Just as a private property owner would require a reasonable, market-driven rent be paid for others to use that property, the public should not be statutorily forced to use its property to subsidize a private commercial entity without proper compensation for the value that use of the property provides. Methods of deriving such fee amounts are numerous and not the subject of these Comments, but it should be noted that the current widespread deployment of wireless antennae and related facilities in the Chicago metropolitan region at fee levels very different from the federal minimums demonstrates unequivocally the ability of the industry to absorb these fees as business costs and still thrive and profit. There may be examples of excessive fees which could be held up to show an intent somewhere in this nation to inhibit the deployment of wireless facilities, but that must not be confused with, or used to justify elimination of, the public's right to just compensation for the use of its property, the rights-of-way.

REASONABLE CONDITIONS

In reviewing the reasonableness of conditions placed on permitting, licensure, or construction of facilities related to telecommunications, again it must be remembered that the public rights-of-way must not be used to subsidize a commercial enterprise without the express consent of the local jurisdiction. This includes allowing requirements to return the right-of-way to at least as safe and attractive a condition as it was before the right-of-way was imposed upon. Certainly the facilities will take some space, there is no escaping that, but requirements for shielding, coloring, plantings, repairing holes in the ground, etc. must be allowed unless they are patently unreasonable or infeasible or have the intent of prohibiting the activity.

CONCLUSION

The Conference would like to thank the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly that which is built in the public rights-of-way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' authority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rich Veenstra", with a stylized, flowing script.

Rich Veenstra,
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